

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

May 26, 2010

DIVISION ONE

Court convened at 9:00 a.m.

Present: Mallano, P.J., Rothschild, J., Chaney, J., Johnson, J. and C. Hon, Deputy Clerk.

Each of the following:

B214464 Kojoori v. Kojoori
B216753 Valencia v. Smyth
B218225 Carleo v. Tong

Argument waived, cause submitted.

B213665 Regency Outdoor Advertising
 v.
 Stephens

Matter continued to June 23, 2010.

B213919 Montrose Chemical
 v.
 Century Indemnity

Matter continued to July 28, 2010.

DIVISION ONE (continued)

B213081 Rooney
 v.
 State of California

Merits:
Argued by Steven B. Stevens for appellant and by Matthew S. Lipinski for respondent. Cause submitted.

B217082 Gibson
 v.
 Swingle

Merits:
Argued by Jeffrey A. Agnew for appellant and by Richard H. Gibson for respondent. Cause submitted.

B213657 Franco
 v.
 Global Integrity Realty Corporation

Appearances:
Sima Gohar Aghai for appellant and John M. Julius, III for respondent.
Argument waived and submitted.

B216003 McMahon, et al.
 v.
 Marsh & McClennan Companies, Inc., et al.

Merits:
Argued by Everett L. Skillman for appellants and by Jennifer L. Conn for respondents. Cause submitted.

DIVISION ONE (continued)

B216885 Navarro, et al.
 v.
 Cruz

Merits:

Argued by William R. Ramsey for appellants and by Lawrence Rosenzweig for respondent. Cause submitted.

Court recessed.

Court reconvened at 10:30 a.m.

Present: Mallano, P.J., Rothschild, J., Chaney, J., Johnson, J. and C. Hon, Deputy Clerk.

B214671 Treweek, et al.
 v.
 California Capital Insurance Company

Merits:

Argued by Lance D. Orloff for appellant and by Paul E. Kremser, Jr. for respondent. Cause submitted.

B212699 Freeman
 v.
 King, et al.

Merits:

Argued by Nick A. Alden for appellant and by Michael A. Cisneros, Daniel B. Herbert and Mark Waecker for respondents. Cause submitted.

Rothschild, J. leaves the bench.

DIVISION ONE (continued)

B211710 Samantha C.
 v.
 State Department of Development Services, et al.

Merits:
Argued by Thomas Beltran for appellant and by Julie T. Trinh, Deputy Attorney General for respondent and by Mona Z. Hanna for respondent.
Cause submitted.

Court adjourned.

B208730 Bomersheim, et al. (Certified for Publication)
 v.
 Los Angeles Gay and Lesbian Center

The order denying class certification is reversed. The cause is remanded to the trial court with directions to delete the word "therefore" from the class definition and certify the class. The parties are to bear their own costs on appeal.

Chaney, J.

We concur: Mallano, P.J.
 Johnson, J.

B218144 Cedric Green (Not for Publication)
 v.
 Kelly Services, Inc

The judgment is affirmed. Respondent(s) to recover costs.

Chaney, J.

We concur: Rothschild, Acting P.J.
 Johnson, J.

DIVISION ONE (continued)

B213724 Lynsey Padilla (Not for Publication)
 v.
 Kristen Thomas

The judgment is reversed and the cause remanded for new trial.

Chaney, J.

We concur: Mallano, P.J.
 Rothschild, J.

B212821 People (Not for Publication)
 v.
 Christopher Holt

The judgment is modified to reflect that the \$200 Penal Code section 1202.45 parole revocation restitution fine is stricken. As so modified, the judgment is affirmed. The clerk of the superior court is directed to prepare a modified abstract of judgment and to forward it to the Department of Corrections and Rehabilitation.

Chaney, J.

We concur: Rothschild, Acting P.J.
 Johnson, J.

B215079 People (Not for Publication)
 v.
 Adrian Guadalupe Arriano

The judgment is affirmed.

Mallano, P.J.

We concur: Rothschild, J.
 Johnson, J.

DIVISION ONE (continued)

B219801 In re Arthur Martinez on Habeas Corpus (Not for Publication)

The order from which the appeal was taken is affirmed.

Mallano, P.J.

We concur: Chaney, J.
 Johnson, J.

B218182 In re Arthru Martinez on Habeas Corpus (Not for Publication)

The order from which the appeal was taken is affirmed.

Mallano, P.J.

We concur: Chaney, J.
 Johnson, J.

B218906 People (Not for Publication)
 v.
 Mario Gallardo

The judgment is affirmed.

Chaney, J.

We concur: Mallano, P.J.
 Rothschild, J.

DIVISION ONE (continued)

B217345 People (Not for Publication)
v.
Kenneth Johnson

The conviction for assault (Pen. Code, § 220, subd. (a)) is reversed for insufficient evidence. The sentence is vacated and the matter is remanded for resentencing. In all other respects, the judgment is affirmed.

Chaney, J.

We concur: Mallano, P.J.
 Johnson, J.

B218441 People (Not for Publication)
v.
Joel Williams

The sentence is vacated and the cause remanded for resentencing on count 1 for first degree burglary and for correction of clerical errors as follows: (1) correct section 1 of the abstract of judgment to reflect that Williams was sentenced to the middle term on count 2 for attempted robbery, and not the lower term; (2) correct section 2 of the abstract of judgment to reflect that the enhancement on count 1 for first degree burglary was imposed under section 12022.5, subdivision (a), and not 122022.53, subdivision (b); (3) in section 3 of the abstract of judgment, strike the reference to "enhancements" under section 1170.12, but leave section 4 intact which shows that Williams's principal terms were doubled under section 1170.12; and (4) correct the minute order from the August 14, 2009 sentencing hearing to reflect that the enhancement on count 1 for first degree burglary was imposed under section 12022.5, subdivision (a), and not 122022.53, subdivision (b). In all other respects, the judgment is affirmed.

Chaney, J.

We concur: Mallano, P.J.
 Rothschild, J.

DIVISION ONE (continued)

B213103 People (Not for Publication)
v.
Jerry Emmit Flenoury

The judgment is affirmed. The abstract of judgment shall be corrected to reflect 382 actual days credit, 190 days of conduct credit, for a total credit for time served of 572 days. The trial court is directed to prepare a corrected abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

Johnson, J.

We concur: Mallano, P.J.
 Chaney, J.

B212139 People (Not for Publication)
v.
Alvaro Luna Jara

The judgment is affirmed. The abstract of judgment shall be corrected in conformance with this opinion. The trial court is directed to prepare a corrected abstract of judgment striking the parole revocation fine, ordering payment of a court security fee of \$80, and forward it to the Department of Corrections and Rehabilitation.

Johnson, J.

We concur: Rothschild, Acting P.J.
 Chaney, J.

DIVISION ONE (continued)

B217588 Leonor Fontes (Not for Publication)
 v.
 Gregory Cadwallader

The June 5 2009 "Qualified Domestic Relations Order Re: Motion Picture Industry Pension Plan" (QDRO) is reversed. On remand the trial court is directed to enter a new order in which "12.80%" is deleted from paragraph 5(a), 5(b), and 6(b) and replaced with "26.58 percent"; in all other respects the new order is to contain the same provisions as the June 5, 2009 QDRO. Appellant is entitled to costs on appeal.

Mallano, P.J.

We concur: Rothschild, J.
 Chaney, J.

DIVISION TWO

B211672 People (Not for Publication)
 v.
 Esquivel

The judgment is modified to reduce appellant's conviction under count 8 to attempted grand theft. As so modified, the judgment is affirmed.

Ashmann-Gerst, J.

We concur: Boren, P.J.
 Chavez, J.

May 26, 2010 (Continued)

DIVISION TWO (continued)

B215931 People (Not for Publication)
v.
Sanchez

The judgment is affirmed.

Ashmann-Gerst, J.

We concur: Boren, P.J.
 Doi Todd, J.

DIVISION THREE

B210072 Sandarg (Certified for Partial Publication)
v.
Dental Board of California

The judgment is affirmed. The board is awarded costs on appeal.

Kitching, J.

We concur: Klein, P.J.
Aldrich, J.

B206881 In Re Electric Refund Cases (Certified for Partial Publication)

Pacific Gas & Electric Company's, Southern California Edison Company's and San Diego Gas & Electric Company's Supplemental Request for Judicial Notice in support of Reply Brief, filed April 23, 2009, is granted. Arizona Electric Power Cooperative, Inc.'s Request for Judicial Notice, filed January 16, 2009, is granted. The judgment is reversed. Plaintiffs and appellants Pacific Gas & Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are to recover any costs on appeal.

Aldrich, J.

We concur: Croskey, Acting P.J.
 Kitching, J.

DIVISION THREE (continued)

B209321 People (Not for Publication)
v.
Albert Salcedo

The judgment is affirmed.

Aldrich, J.

We concur: Croskey, Acting P.J.
 Kitching, J.

[illegible]

The order continuing wardship and the order denying appellant's petition for a writ of error coram nobis (including any order denying a motion for a new trial or other relief under Welfare and Institutions Code sections 775 and 778) are affirmed.

Kitching, J.

We concur: Klein, P.J.
Aldrich, J.

B216667 Los Angeles County, D.C.F.S. (Not for Publication)
v.
Brenda S.,

The judgment is affirmed.

Kitching, J.

We concur: Croskey, Acting P.J.
 Aldrich, J.

DIVISION FOUR

B215316 People (Not for Publication)
v.
Juan A. Sepulveda

The judgment is affirmed.

Epstein, P.J.

We concur: Willhite, J.
Manella, J.

B215343 People (Not for Publication)
v.
Harold A. Hicks

The judgment is affirmed.

Suzukawa, J.

We concur: Epstein, P.J.
Willhite, J.

B218346 Post (Not for Publication)
v.
Quon

The judgment is reversed and the cross-appeal is dismissed as moot. The assessor is awarded his costs.

Suzukawa, J.

We concur: Willhite, Acting P.J.
Manella, J.

DIVISION FOUR (continued)

B212823 Huverserian, et al. (Certified for Publication)
v.
Catalina Scuba Luv, Inc.

The judgment is reversed. Appellants are to have their costs on appeal.

Epstein, P.J.

We concur: Willhite, J.
Suzukawa, J.

B213450 Trustees of the IBEW-NECA Pension Plan, et al. (Not for Publication)
v.
Gartel Corp.

The judgment is affirmed. Respondents are to have their costs on appeal.

Epstein, P.J.

We concur: Willhite, J.
Manella, J.

DIVISION FIVE

B207475 Deborah Peterson (Not for Publication)
v.
Fox Entertainment Group

The judgment is affirmed. Respondent(s) to recover costs.

Turner, P.J.

We concur: Kriegler, J.
Ferns, J. (Assigned)

May 26, 2010 (Continued)

DIVISION FIVE (continued)

B213769 People (Not for Publication)
v.
Isael E. Rodriguez

The judgment is affirmed.

Turner, P.J.

We concur: Armstrong, J.
 Kriegler, J.

B218902 People (Not for Publication)
v.
Richard Wayne Dunagan

The trial court's finding that defendant's prior conviction in case number NA022263 was a strike is reversed, defendant's sentence is vacated, and this matter is remanded to the trial court for resentencing or, at the People's election, retrial of the strike allegation. The judgment is affirmed otherwise.

Mosk, J.

We concur: Armstrong, Acting P.J.
 Ferns, J. (Assigned)

DIVISION SIX

B215368 In the Matter of Nancy Crawford-Hall (Not for Publication)

The judgment denying appellant's petition is affirmed. Respondents shall recover their costs on appeal.

Yegan, J.

We concur: Gilbert, P.J.
 Coffee, J.

May 26, 2010 (Continued)

DIVISION SEVEN

B212326 Larkin (Not for Publication)
v.
City of Los Angeles

The judgment is reversed and the case is remanded for further proceedings and to award appellant court costs and reasonable attorney's fees, both in the proceedings below and on appeal, in amounts to be determined by the trial court.

Woods, J.

We concur: Perluss, P.J.
Zelon, J.

B203310 Barnett, et al., (Certified for Partial Publication)
v.
First National Insurance Company of America

The judgment and orders are affirmed. The parties are to bear their own costs on appeal.

Jackson, J.

We concur: Perluss, P.J.
Zelon, J.

DIVISION EIGHT

B211048 People (Not for Publication)
v.
Johnny Mejia, et al.

The trial court's judgments are affirmed.

Bigelow, P.J.

We concur: Rubin, J.
Lichtman, J. (Assigned)

DIVISION EIGHT (continued)

B209375 People (Not for Publication)
v.
Edwin Cruz

We modify the judgment on count 1 to reflect that the 25 years-to-life enhancement under sections 12022.53, subdivisions (d) and (e)(1) is to be consecutive to the term of life without possibility of parole. The trial court shall amend the abstract of judgment to reflect the modified judgment on count 1, and shall forward copies to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

Bigelow, P.J.

We concur: Rubin, J.
Lichtman, J. (Assigned)

B213632 People (Not for Publication)
v.
Justin Sung Hong

The judgment is modified to reflect that the gang enhancement is subject to a 15 year minimum eligible parole date under section 186.22, subdivision (b)(5). The clerk of the superior court is directed to correct the abstract of judgment to reflect this modification and forward the corrected abstract to the Department of corrections. As modified, the judgment is affirmed.

Bigelow, P.J.

We concur: Flier, J.
Lichtman, J. (Assigned)

DIVISION EIGHT (continued)

B208687 Bode (Not for Publication)
v.
Los Angeles Metropolitan Medical Center

We reverse the order awarding Bode her attorney's fees to the extent it was based on the ground that the hospital's litigation conduct was frivolous. We remand the matter to the trial court to hold a new hearing on the issue of whether the hospital acted in bad faith. If attorney's fees are awarded on the basis, they are limited to the fees incurred in connection with the second mandate action. Each party shall bear its own appellate costs.

Rubin, J.

We concur: Bigelow, P.J.
Lichtman, J. (Assigned)

B214767 Mary A. Fritsch (Not for Publication)
v.
Princess Cruise Lines, Ltd.,

The judgment is affirmed. Respondent is awarded costs on appeal.

Bigelow, P.J.

We concur: Rubin, J.
Lichtman, J. (Assigned)

DIVISION EIGHT (continued)

B190301 Timothy Armour (Not for Publication)

v.

Nina Ritter

The Capital Group Companies, Inc.

The judgment is reversed and the matter is remanded for further proceedings in the following areas: (1) The court is to characterize the 12,349 shares of CGC stock and 10,000 shares of nB stock purchased by Tim during separation as community's property. (2) The trial court is to value the community's postseparation stock and the community's preseparation 50,511 shares of CGC stock, taking into account CGC's anticipated redemption of any shares Nina receives. The court is thereafter to allocate the stock and other marital assets in such a way as to ensure Tim and Nina receive equal amounts of the community estate notwithstanding CGC's redemption of Nina's shares. In carrying out this court's directive, the trial court's current injunction, barring Tim from transferring stock to Nina and prohibiting CGC from redeeming that stock, is to remain in place with the trial court directed to enjoin the parties and CGC from any act in derogation of that stock's value pending the trial court's further order after remand. In all other respects, the judgment is affirmed. The parties are to bear their own costs on appeal.

Flier, J.

We concur: Bigelow, P.J.
Lichtman, J. (Assigned)

DIVISION EIGHT (continued)

B221981 Michael P. Judge (Not for Publication)

v.

Superior Court, Los Angeles County

(Karen Hennigan, et al.)

The petition for writ of mandate is granted in part. The respondent court is directed to further amend its July 17, 2009 order re: petition for research, as previously amended on November 30, 2009, by requiring that, before any research is conducted, the research petition be served on counsel of record for each child whose juvenile case file, or portions thereof, is sought to be disclosed or who will be asked to participate in the research project.

Service on the Public Defender and Alternate Public Defender, respectively, is sufficient with respect to children they represent, as long as the Public Defender and Alternate Public Defender are provided with sufficient information from which they can determine which of their clients will be contacted regarding the proposed research project. In all other respects, the petition is denied. The parties are to bear their own costs in this writ proceeding.

Rubin, J.

We concur: Bigelow, P.J.
 Grimes, J.